

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
American Utex International, Ltd.	:	
for Redetermination of a Deficiency or for Refund	:	AFFIDAVIT OF MAILING
of Corporation Franchise Tax under Article 9-A of	:	
the Tax Law for the Fiscal Years Ending	:	
December 31, 1977, December 31, 1978 and	:	
December 31, 1979.	:	

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon American Utex International, Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

American Utex International, Ltd.
265 Bethpage Spagnoli Rd.
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of December, 1984.

David Parchuck

Nicola J. Williams

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
American Utex International, Ltd. :
for Redetermination of a Deficiency or for Refund :
of Corporation Franchise Tax under Article 9-A of :
the Tax Law for the Fiscal Years Ending :
December 31, 1977, December 31, 1978 and :
December 31, 1979. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Kenneth T. Zemsky, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth T. Zemsky
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 31, 1984

American Utex International, Ltd.
265 Bethpage Spagnoli Rd.
Melville, NY 11747

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Kenneth T. Zemsky
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
AMERICAN UTEX INTERNATIONAL LTD.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ending December 31, 1977, December 31, 1978	:	
and December 31, 1979.	:	

Petitioner, American Utex International Ltd., 265 Bethpage Spagnoli Road, Melville, New York 11747, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ending December 31, 1977, December 31, 1978 and December 31, 1979 (File No. 47169).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1984 at 11:00 A.M., with all briefs to be submitted by June 29, 1984. Petitioner appeared by Ernst & Whinney, C.P.A.'s (Kenneth T. Zemsky, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the Audit Division properly excluded payments, made by petitioner to its parent Canadian corporation for services rendered by employees of the parent corporation, from petitioner's payroll allocation formula.

FINDINGS OF FACT

1. On December 15, 1982, the Audit Division issued three notices of deficiency against petitioner, American Utex International Ltd., alleging

corporate tax deficiencies of \$10,099.00 plus interest, \$7,313.00 plus interest and \$4,180.00 plus interest for the fiscal years ending December 31, 1977, December 31, 1978 and December 31, 1979, respectively. Attached to each notice was a Statement of Audit Adjustment which explained that the alleged deficiency was "(b)ased on recent field audit."

2. On its corporation franchise tax reports for the fiscal years at issue, petitioner reported the following:

<u>Period Ending</u>	<u>Entire Net Income</u> ¹	<u>N.Y. Property Factor</u>	<u>N.Y. Receipts Factor</u>	<u>N.Y. Payroll Factor</u>	<u>Business Allocation %</u>
December, 1977	\$463,842	100%	10.33 %	31.17 %	37.96 %
December, 1978	\$523,406	100%	19.463%	44.112%	45.76 %
December, 1979	\$236,251	100%	9.371%	50.359%	42.275%

3. The Audit Division recalculated petitioner's business allocation percentages for each of the years at issue. It increased the New York payroll factor for each year to 100 percent because all of petitioner's employees were within New York. As a result, the Audit Division increased petitioner's business allocation percentages to 59.7315%, 59.7315% and 59.9712% for the fiscal years ending December 31, 1977, December 31, 1978 and December 31, 1979, respectively.

4. Petitioner is a British corporation which does business in New York State. It is an apparel wholesaler and maintains a warehouse on Long Island. Its parent corporation, Utex Corporation, is a Canadian corporation which manufactures and wholesales textiles.

5. Petitioner offered only vague evidence concerning what it termed "reimbursements" which it made to its parent corporation for various services. Its representative, Kenneth T. Zemsky, testified (although it is not clear

¹ Petitioner did not report any investment income during the years at issue.

whether he had personal knowledge of the facts) that such payments were for "(v)arious services ranging from line functions such as accounting, bookkeeping to law operational staff functions, purchasing agents, purchasing agents for shipping, expediting shipping." Petitioner, in determining its New York payroll factor, included such reimbursements in the denominator of such factor.

6. Petitioner also asserts in its petition that "considerations of equity compel inclusion of the wages in question (i.e., the "reimbursements" described supra) in Utex's payroll allocation."

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §210.1, the corporate franchise tax is calculated on one of four alternative bases, the first (which is at issue herein) being the portion of the taxpayer's entire net income allocated to New York which is ascertained by multiplying business income by a business allocation percentage, and investment income by an investment allocation percentage, and adding the two products. The allocation of business income only is at issue herein.

B. That pursuant to Tax Law §210.3, the business allocation percentage is derived by means of a three-factor formula using the ratio of property, receipts and payroll within and without New York. The payroll factor is determined by:

"(A)scertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees within the State, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the state, except general executive officers...." Tax Law §210.3(a)(3).

C. That payments made by petitioner to its parent corporation, Utex Corporation, were not properly included in petitioner's payroll allocation formula because such payments were not made to petitioner's own employees. In addition, pursuant to Finding of Fact "5", supra, petitioner did not offer

adequate proof concerning the nature of the reimbursements made to its parent corporation to conclude that such payments consisted of personal service compensation.

D. That, furthermore, petitioner has not shown that the business allocation percentage determined by the Audit Division did not properly reflect the activity, business income or capital of petitioner within New York. Therefore, the State Tax Commission does not choose to exercise the discretionary power conferred by Tax Law §210.8 to resort to a method other than the statutory three-factor formula. Cf. Matter of Bonner Properties, Inc., State Tax Commission, April 6, 1984.

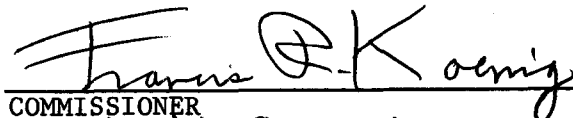
E. That the petition of American Utex International Ltd. is denied.

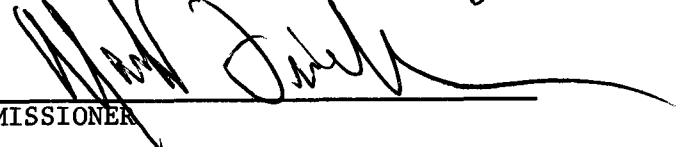
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER